



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 30, 2022

IN THE MATTER OF:

Appeal Board No. 621899

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 621897, 621898, and 621899, the claimant appeals from the decisions of the Administrative Law Judge filed March 2, 2022, insofar as the decisions sustained the initial determinations holding the claimant ineligible to receive benefits, effective November 2, 2020 through December 14, 2020, on the basis that the claimant was not capable of work; charging the claimant with an overpayment of \$1,480 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4) and Pandemic Emergency

Unemployment Compensation (PEUC) benefits of \$296 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 56 effective days and charging a civil penalty of \$266.40 on the basis that the claimant made willful misrepresentations to obtain benefits

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and behalf of the Commissioner of Labor.

The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant last worked as a factory worker that required her to do hard physical labor. The claimant filed a claim for benefits on

March 28, 2020, effective March 9, 2020. The claimant read the Claimant Handbook on online. The handbook advised the claimant that she must be ready, willing, and able to work. The Handbook informed claimants that pregnant claimants are eligible for benefits according to the same rules that apply to all other claimants and a claimant does not have to tell the Department of Labor about a pregnancy unless it affects one's ability to work.

The claimant was pregnant. She went to the hospital on October 31, 2020 and gave birth to her third child on November 1, 2020. She had a normal delivery. The claimant was discharged from the hospital on November 2, 2020. She received discharge instructions from the hospital which state, "No heavy lifting greater than 10 pounds" and "Lifting Restrictions: No heavy lifting 6 weeks postpartum...No strenuous activity." The claimant was cleared to return to work by her doctor on November 3, 2020 and was restricted to doing only light duty work that did require a lot of standing or lifting. She was capable of working for the period beginning November 3, 2020 and ending December 14, 2020.

The claimant certified for benefits each week beginning November 2, 2020 and ending December 14, 2020. In each of the certifications she was asked "How many days were you NOT ready willing able to work." The claimant indicated that there were zero days that she was not ready willing and able to work. She received \$1,480 in regular benefits and \$296 in PEUC benefits.

OPINION: The credible evidence establishes that, during the period at issue, the claimant was not capable of work on November 2, 2020. She was capable of work from November 3, 2020 through December 14, 2020. It is significant that the claimant had a normal pregnancy. We credit the claimant's testimony that she did not experience a high-risk pregnancy and could perform light duty work. We have long held that a claimant is not capable of work on the day on which she gives birth or while still hospitalized (see Appeal Board Nos. 561955, 559675 A, and 621597). In this case, the claimant gave birth on November 1, 2020 and was discharged from the hospital on November 2, 2020. As November 1, 2020 is not included in the period before us, we conclude that the claimant was not capable of work on November 2, 2020. With respect to November 3, 2020 through December 14, 2020, even though the claimant could not stand on her feet for long periods of time, it is well settled that a claimant is considered capable of employment if she is able to do some work, and that work need not be the same work she did before, or for the same employer. Accordingly, we conclude that the claimant was capable of working after her

physician cleared her to return to work, effective November 3, 2020, and is eligible to receive benefits through December 14, 2020. As the claimant is ineligible for benefits on the basis of lack of capability with respect to November 2, 2020 only, the claimant was overpaid benefits for that day only.

The credible evidence further establishes that the claimant certified each week to being ready, willing and able to work at all times, and the claimant received benefits based on these certifications. In light of our conclusion that the claimant was not capable of work on November 2, 2020 only, we find that the claimant's certifications were truthful except with respect to that date. Accordingly, we conclude that the claimant's certification of capability with respect to the benefits on November 2, 2020 only was factually false and the overpayment of regular unemployment insurance and PEUC benefits she received for that day are recoverable. The claimant, who was discharged from the hospital on November 2, 2020, should have known she was not ready, willing and able to work on that day, her certification for that week also constitutes a willful misrepresentation to obtain benefits. Accordingly, she is subject to a forfeiture penalty of eight effective days and a civil penalty. The amounts of the recoverable overpayment and civil penalty are referred to the Department of Labor for recalculation.

DECISION: The decisions of the Administrative Law Judge, insofar as appealed from, are modified as follows, and, as so modified are affirmed.

In Appeal Board No. 621897, the initial determination, holding the claimant ineligible to receive benefits, effective November 2, 2020 through December 14, 2020, on the basis that the claimant was not capable of work is modified to be effective November 2, 2020, only, and, as so modified, is sustained.

In Appeal Board No, 621898, initial determination, charging the claimant with an overpayment of \$1,480 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4) and Pandemic Emergency

Unemployment Compensation (PEUC) benefits of \$296 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, is modified to be recoverable with respect to November 2, 2020 only, and, as so modified, is sustained.

In Appeal Board No. 621899, the initial determination, reducing the claimant's right to receive future benefits by 56 effective days and charging a civil

penalty of \$266.40 on the basis that the claimant made willful misrepresentations to obtain benefits, is modified to impose a forfeit penalty of eight effective days and a civil penalty based on the recoverable overpayment to be calculated, and, as so modified, is sustained.

The amounts of the recoverable overpayment and civil penalty are referred to the Department of Labor for recalculation

JUNE F. O'NEILL, MEMBER